XI-HC-22

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.800/2004

APPELLANT (In Jail) — Tuman lal @ Goso, S/o Maich Narayan, aged 20 years, R/o Village- Thakur Pali, P.S. Dabhara, Distt. Janjgir-Champa (Chhattisgarh)

Vs

RESPONDENT — State of Chhattisgarh, through: Station House Officer, Police Station, Dabhara, Distt. Janjgir-Champa (Chhattisgarh)

Present:

Mr. V.C. Ottalwar, Advocate for the appellant.

Mr. S. Yadav, Dy. Government Advocate for the respondent-State.

ORAL JUDGMENT

(1st November, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 18th June, 2004 passed by the learned Additional Sessions Judge, Sakti in Sessions Trial No.143/04 whereby learned Additional Sessions Judge has convicted the appellant under Sections 376 (1) & 323 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo additional R.I. for 3 months and R.I. for 2 months respectively.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

85

आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The case of the prosecution, in brief, is that in the intervening night of 29th & 30th January, 2004 around 12.00 the prosecutrix had gone to the holler mill for paddy milling along with her father. Accused sent her father for bringing liquor and thereafter dragged her to nearby field and committed rape with her. While committing rape, he had also bitten her breasts and thereafter fled from there. She returned to her home and narrated the incident to her mother Khojbai (PW-10), father-Roopsingh (PW-2), Kotwarin Reshmi Bai (PW-9) and others. Thereafter the report of the incident was lodged on 30.1.2000 at 9.00a.m. The prosecutrix was sent for medical examination to Community Health Centre, Dabhra where Dr. (Smt.) Shashikala Miri (PW-4) examined her and gave the report of Ex.P-7. Accused was also sent for medical examination where Dr. G.L. Miri (PW-5) examined him and gave his report of Ex.P-12.

After investigation charge sheet was filed and the case was received on transfer by the learned Additional Sessions Judge for trial. During trial, the prosecution examined 12 witnesses. Thereafter, the statement of accused was recorded under Section 313 of Cr.P.C. wherein he denied the evidence available against him in the prosecution case and pleaded innocence & false implication. Learned trial court

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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after hearing learned counsel for the parties has convicted and sentenced the appellant as mentioned above.

Learned counsel for the appellant submits that the incident is of 1.00 a.m. and it is stated that the prosecutrix was dragged from holler mill to a distance of about one kilometer, as stated by Halka Patwari who has prepared the spot map of Ex.P-3, however, there is no corresponding injury of dragging over the person of prosecutrix. It is the case of the prosecution that the prosecutrix was dragged from the holler mill, however, no witness from the holler mill has been examined and even the owner of the mill namely Kosariya, who is brother-in-law of the prosecutrix, has not been examined. The prosecutrix claims that accused had bitten on her breasts, however, the doctor, who has examined her, has clearly stated that injuries present over the breasts of the prosecutrix may not be caused by biting.

On the other hand, learned counsel for the State supporting the impugned judgment has argued that the prosecutrix has clearly stated that she was raped by the appellant after being dragged to a nearby place, her testimony is duly corroborated from the statement of her mother Khojbai, Roopsai and Kotwarin Reshmi Bai, who have stated that the prosecutrix after return from holler mill had narrated about the incident to them. Her statement is further corroborated from the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

37

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

promptly lodged FIR as also from the statement of Dr. (Smt.) Shashikala Miri (PW-4), who has noticed corresponding injuries, four in numbers, over the breasts of the prosecutrix. He further argued that the accused was also sent for examination to Dr. G.L. Miri (PW-5) and on examination he has found the smegma missing from his male organ.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

The conviction of the appellant is based on the statement of the prosecutrix (PW-1), whose age has been assessed by the trial court as 17 years 7 months. She has deposed that on the date of incident around 12-1.00 in the mid night she had gone to the holler mill for milling paddy, the accused sent her father for bringing liquor and thereafter gagged her mouth and took her to nearby Boirbhata at a distance of 10 meter and committed rape with her after undressing her. He had also bitten her breasts by his teeth. After the incident she rushed to her home and narrated about the incident to Kotwarin, Kushal Singh, Purshottam and others. Similar is the statement of Roop Singh (PW-2), father of the prosecutrix, who has stated that he had gone for milling in the holler mill, accused sent him for bringing liquor, on return he did not find his daughter and after some time his

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

daughter came weeping and narrated about the incident. Reshmi Bai (PW-9) & Khojbai Maitri (PW-10) mother of the prosecutrix, have also corroborated the version of the prosecutrix.

It is settled law that in a rape case, conviction can be based on the uncorroborated testimony of the prosecutrix, as the prosecutrix is not an accomplice in the crime of rape but she is the victim of an offence and as such, she stands at higher pedestal than the injured witness and corroboration of her statement is not the requirement of law.

In the light of the above settled principle of law, it is to be considered whether the absence of injuries over the person of the prosecutrix would render her statement unreliable and untrustworthy. It is not in dispute that the prosecutrix is a girl of tender age about 17 years 7 months, whereas, the age of the accused is 20 years. The defence taken by the accused by way of cross-examination is that the prosecutrix used to joke with the owner of holler mill Kosariya, who was frequent visitor of her house, and they were in love with each other. The above suggestion has been denied by the prosecutrix, though she admitted that because Kosariya is her brother-in-law in relation, he used to joke with her. It is unbelievable that simply because the appellant saw the prosecutrix and said Kosariya talking to each other,

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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the appellant has been implicated in a false case and that too of a rape and mere absence of injuries on the person of the prosecutrix would not make her statement unreliable.

In the instant case the version of the prosecutrix was not only corroborated from the statement of her mother Khojbai (PW-10), Reshmi Bai (PW-9) & Roop Singh (PW-2) but it is also corroborated from the promptly lodged FIR as also statement of Dr. (Smt.) Shashikala Miri (PW-4), who has noticed four abrasions on the breasts of the prosecutrix and the testimony of the prosecutrix cannot be discarded only on the ground that in Para 17 of deposition the lady doctor (PW-4) has stated that the injuries could not be caused by teeth bite. From perusal of the statement of lady doctor it is also evident that the prosecutrix was not accustomed to sexual intercourse. Absence of smegma over the genital organ of the appellant also corroborates the case of the prosecution.

In the result, the appeal being devoid of substance deserves to be dismissed and the same is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Roshan/-

[रीडर कोर्ट]